

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

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Case Title: Philip Gaddy, et al. v. James Bryan Menke

Case Number: 05-01188

Document Information

Description: Complaint (05-1188) Philip Gaddy vs. James Bryan Menke . NOS 426 to Determine Dischargeability 523 . (Filing Fee \$ 150.00 Receipt # 10150-LMK)

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UNITED STATES BANKRUPTCY COURT OFFICE OF THE CLERK

DISTRICT OF NEW MEXICO

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U.S. BANKRUPTCY COURT
ALBUQUERQUE, N.M.

In Re:

JAMES BRYAN MENKE,

Debtor.

Case No. 05-16296-SA

**PHILIP GADDY, LANE GADDY, WESTON GADDY,
BERNARD FENENBOCK and SANDIA STORAGE II, LLC.,**

Plaintiffs,

vs.

JAMES BRYAN MENKE,

Defendant.

Adversary Proceeding No. 05-01188-S

Complaint to Determine Dischargeability

COME NOW, **PHILIP GADDY, LANE GADDY, WESTON GADDY, BERNARD FENENBOCK and SANDIA STORAGE II, LLC.** plaintiffs herein, by David Jaramillo and Philip Gaddy, GADDY LAW FIRM, their undersigned counsel, and for their complaint against the defendant, allege as follows:

1. This is a core proceeding over which this court has jurisdiction under title 28 U.S.C § 157(b).
2. Defendant is the debtor in this chapter 7 case. Plaintiffs are creditors of defendant.
3. This is an adversary proceeding to determine the dischargeability of a debt.
4. Defendant is indebted to plaintiffs in the following sums:

A. To Philip Gaddy in the amount of \$26,500, together with interest from October 3, 2001, at the rate of fifteen percent per annum (15%);

B. To Philip Gaddy in the amount of \$24,340, together with interest from July 3, 2001, at the rate of fifteen percent per annum (15%);

C. Sandia Storage, Lane Gaddy, Weston Gaddy and Bernard Fenenbock in the amount of \$44,764.61, together with interest from October 3, 2001, at the rate of fifteen percent per annum (15%).

5. The underlying nature of these debts is based at least in part upon the borrowed money being obtained under false pretenses, false representations and actual fraud while the defendant was acting in a fiduciary relationship toward the plaintiffs.

6. The nature of the debts was determined in State Court proceedings in a case initially filed by defendant and entitled *JAMES B. MENKE v. PHILLIP GADDY, GLENNA GADDY, Individually and as parents and Guardians of LANE GADDY and WESTON GADDY, Minor Children, and BERNARD FENENBOCK, Bernalillo County Cause No. CV-99-12260.*

7. The matter resulted in entry of a Judgment in favor of the Plaintiffs herein and against Defendant James Menke for fraud, breach of fiduciary duty, conversion, and embezzlement. See Judgment and Transcript of Judgment attached hereto.

5. The sums due Plaintiffs should be declared non-dischargeable under 11 U.S.C. § 523(a) of the Bankruptcy Code.

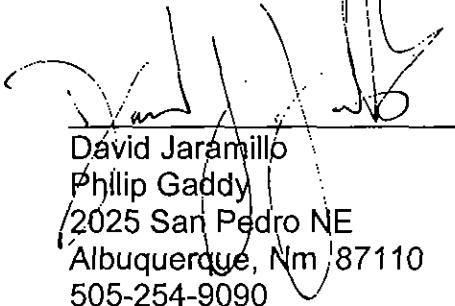
WHEREFORE, plaintiffs request relief as follows:

A. A declaration that Defendant's debts to Plaintiffs in the above stated amounts, plus interest, costs and attorneys fees herein, are not dischargeable;

B. Such other and further relief as may be appropriate.

Respectfully submitted,

GADDY LAW FIRM


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